

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No.306 OF 2007

Qamar Siddiqui S/o Late Sri Fahimuddin

R/o 91 Dhamawala, Dehradun

...

Appellants

Versus

1. Sri Mohan Lal S/o Sri Ram Dulare, R/o 77 Reetha
Mandi, Dehradun

2. State of Uttarakhand ...Respondents

Dated: August 17, 2007

Sri M.K. Goyal, learned counsel for the appellant

Sri Lokendra Dobhal, learned counsel for the Respondent No.1

Sri Harish Pujari, learned Addl. G.A. for the State/Respondent No.2

HON. DHARAM VEER, J.

This is an appeal, preferred u/s 378(4) of the Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), against the order dated 15.1.2007 passed by Special Judicial Magistrate-II, Dehradun in Case No.2047 of 2003, Qamar Siddiqui v. Mohan Lal.

2. In brief, the facts of the case are that appellant/ complainant filed a complaint u/s 138 of the Negotiable Instruments Act, 1881 against the respondent-Mohan Lal on 19.11.1999 in the court of CJM, Dehradun. During the course of trial, the witnesses of the complainant were examined and after completing the evidence, the case was fixed for defence evidence. Prior to the date of 15.1.2007, the date was fixed for 11.1.2007 before the trial court and on that day, the appellant was present in the court and 15.1.2007 was fixed for cross-examination for the defence witnesses. But on 15.1.2007, the appellant/complainant could not present in the trial court and his complaint was dismissed u/s 256 of Cr.P.C.

3. Sri M.K. Goyal, learned counsel for the appellant has submitted that on 15.1.2007, the case was fixed for cross-examination of the defence witnesses but the appellant could not attend the court on that day as he was out of station with some personal work and

counsel engaged by him did not move the application to exempt the personal attendance of the appellant/complainant and for that reason his complaint was dismissed.

4. Learned counsel for the appellant submitted that if the order dated 15.1.2007 would not be set aside, then his right would be adversely affected. He further submitted that the appellant could not present before the trial court on the date fixed due to the reason that he was out of station on that day. He further submitted that the appellant could not appear before the trial court on the date fixed due to compelling circumstances and he want to proceed with the complaint as per law.

5. Learned counsel for the appellant undertakes before this Court that in future dates, the appellant will remain present in the court on each and every date and will cooperate with the trial and will not take any adjournment on the personal ground.

6. After considering the entire facts and circumstances of the case as well as the submission made by learned counsel for the appellant, this Court is of the view that the order dated 15.1.2007 passed by Special Judicial Magistrate-II is not sustained in the eye of law.

7. For the reasons recorded above, the appeal is allowed. The order dated 15.1.2007 passed by Special Judicial Magistrate-II, Dehradun is hereby set aside. The learned Special Judicial Magistrate-II, Dehradun is directed to proceed with the case after giving an opportunity of evidence to both the parties and after hearing learned counsel for the parties as per law. Both the parties are directed to appear before the trial court on 15.9.2007.

(Dharam Veer, J.)

Rajeev Dang